

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

JAVELL FOX,

Plaintiff,

DECLARATION

-against-

15-CV-0144

DIANE LABATTE,

LEK/RFT

Defendant.

THOMAS MAURO, on the date noted below and pursuant to § 1746 of title 28 of the United States Code, declares the following to be true and correct under penalty of perjury under the laws of the United States of America:

1. I am presently employed by the Department of Corrections and Community Supervision ("DOCCS") as the Inmate Grievance Program Supervisor ("IGPS") at Eastern Correctional Facility ("Eastern C.F.").
2. In my position I have personal knowledge of the inmate grievance records maintained at Eastern C.F. with respect to each grievance filed by an inmate.
3. In my position I have personal knowledge of the manner in which grievances are filed and reviewed by the IGRC and have full knowledge of DOCCS Directive # 4040 governing the inmate grievance process.
4. Although not a party to this lawsuit, I submit this declaration in support of defendant's motion for summary judgment.

5. It is my understanding that Plaintiff Jayell Fox (DIN # 12-B1626) brings this action against defendant Diane Labbate alleging that she interfered with his legal mail and failed to mail correspondence to public officials in violation of his First Amendment rights.

6. I conducted a diligent search of the inmate grievance records at Eastern C.F. This search produced several grievances filed by inmate Fox. I examined each grievance filed by plaintiff to determine whether any of the allegations related to this lawsuit were contained in plaintiff's other complaints.

7. Based upon my review, only the grievance filed on January 26, 2015 and assigned case number ECF-26198-15 addresses these allegations. Attached as **Exhibit A** is the grievance packet for ECF-26198-15.

8. The grievance is a consolidation of letters of complaint written by plaintiff on December 25, 2014, January 18, 2015, and January 23, 2015. A letter dated February 24, 2015 was subsequently consolidated with the grievance. **Exhibit A** at 7-8, 13-14, 21-22.

9. These letters make similar allegations that defendant Labbate refused to mail plaintiff's legal mail and correspondence to public officials. **Exhibit A** at 7-8, 13-14, 21-22.

10. On February 4, 2015, the IGRC reached a decision with respect to plaintiff's grievance and found that the business office properly followed Directive # 2788 with respect to handling inmate legal mail and found that at no time did the business office hold or not process grievant's mail. **Exhibit A** at 16-17.

11. Plaintiff appealed the grievance to the superintendent on February 4, 2015. **Exhibit A** at 16-17.

12. The superintendent denied plaintiff's grievance on April 9, 2015 finding that defendant Labbate made every effort to address plaintiff's concerns and clarify confusion with Directive # 2788. **Exhibit A** at 1.

13. Based on a review of my office's records, plaintiff has not appealed grievance ECF-26198-15 to CORC.

14. I have been informed that the plaintiff alleges that the Inmate Grievance Supervisor and IGRC at Eastern C.F. failed to properly file his grievances.

15. I make every effort to ensure that each grievance received from an inmate is properly filed and reviewed by the IGRC in accordance with DOCCS Directive # 4040.

16. I have never deliberately failed to file a grievance received from plaintiff or any other inmate.

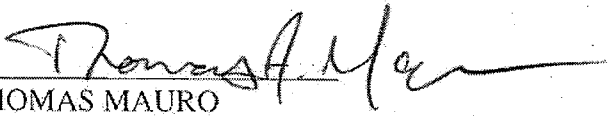
17. In addition to ECF-26198, plaintiff successfully filed several grievances with the IGRC at Eastern C.F. between December 2014 and February 2015: (1) ECF-26147-14, filed on December 10, 2014; (2) ECF-26187-15, filed on January 15, 2015, (3) ECF-26197-15, filed on January 26, 2015; and (4) ECF-26217-15 filed on February 12, 2015. Attached hereto as **Exhibit B** are the grievance packets for 26187, 26197, and 26217.

18. I have reviewed each of the grievances listed in the paragraph above and they do not raise allegations against defendant Labbate or concern interference with plaintiff's legal mail.

19. The inmate grievance office's records indicate that of the grievances listed in paragraph 17 only ECF-26147-14 and ECF-26217-15 have been appealed to CORC, neither of which concern the allegations contained in plaintiff's complaint.

20. Because Eastern C.F.'s records reflect that inmate Javell Fox did not appeal any grievance filed at Eastern C.F. to CORC concerning the allegations contained in his complaint, I respectfully request that the Court grant defendant's motion for summary judgment on the grounds that plaintiff has failed to exhaust his administrative remedies.

Dated: May 15, 2015
Ulster County, New York


THOMAS MAURO